

# TENNESSEE REGULATORY AUTHORITY



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
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

T.R.A. DOCKET ROOM

Ron Jones, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director  
Sara Kyle, Director

## MEMORANDUM

TO: Chairman Ron Jones  
Director Sara Kyle  
Director Pat Miller

FROM: Eddie Roberson, Chief, Consumer Services and External Affairs Division   
Edwin Mimms, Manager, Do Not Call Program   
J.D. Connell, Counsel

DATE: August 11, 2005

SUBJECT: Settlement with National Forex , Corp. (Docket No. 05-00175)

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Attached is a Settlement Agreement between the Consumer Services and External Affairs Division ("Staff") and National Forex , Corp ("National Forex") for violations of the Tennessee Do-Not-Call Telephone Solicitation statute, Tenn. Code Ann. §65-4-401 *et seq.*

Three (3) complaints alleging six (6) separate violations have been registered against National Forex with the Authority alleging that the company violated TCA §65-4-401 *et seq.* The complaints were registered with the Authority between March 8, 2005 and June 6, 2005. At the time of the complaints, National Forex. was not registered with the Authority as a solicitor. This Settlement requires National Forex to make a payment of \$8,400 to the Authority along with assurances that it will fully comply with applicable state law. The terms of this Settlement require National Forex to pay the first installment of \$4,200 to the Authority no later than thirty (30) days following the Authority's ratification of the Settlement Agreement with the remaining \$4,200 be paid no later than ninety (90) days following approval of the Settlement Agreement. A designated representative for National Forex will be available telephonically for the Conference to answer any questions you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no further telephone solicitation complaints being filed against National Forex. Staff submits the attached Settlement Agreement for your deliberation at the August 22, 2005 Authority Conference.

cc: Director Deborah Taylor Tate  
Don R. Boswell Esq., Counsel for National Forex  
Richard Collier, General Counsel

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

IN RE:	)		
	)		
ALLEGED VIOLATIONS OF TENN.	)	DOCKET NO.	05-00175
CODE ANN. §65-4-401 <i>et seq</i> , DO-NOT-	)		
CALL SALES SOLICITATION LAW,	)	DO-NOT-CALL	T05-00082
AND RULES OF TENNESSEE	)	PROGRAM	T05-00155
REGULATORY AUTHORITY, CHAPTER	)	FILE NUMBERS	T05-00164
1220-4-11, BY:	)		
	)		
NATIONAL FOREX, CORP	)		
	)		
	)		

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and National Forex, Corp. ("the Company"). This Settlement Agreement, which pertains to three complaints filed by the same complainant alleging that the Company violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. §65-4-401, *et seq*, and TENN. COMP. R. & REGS. 1220-4-11.07 and the failure of the Company to register in the Do-Not-Call Program pursuant to TENN. CODE ANN. §65-4-405(d), and its concomitant regulations TENN. COMP. R. & REGS. 1220-4-11.04. This Settlement Agreement is subject to the approval of the Directors of the TRA.

The CSD's investigation in this docket commenced after it received a complaint (T05-00082) on March 8, 2005, alleging that the complainant, a person properly listed on the Do-Not-Call register, received an unlawful telephone solicitation call from the

Company on February 15, 2005 and then received two additional unlawful telephone solicitation calls from the Company on March 3, 2005. The CSD provided the Company with notice of these violations on March 8, 2005.

The CSD's investigation in this docket continued after it received a second complaint (T05-00164) on May 19, 2005, alleging that the complainant, a person properly listed on the Do-Not-Call register, received two unlawful telephone solicitation calls from the Company on the same day of April 27, 2005. Pursuant to the CSD's investigation, a subpoena was issued to the complainant's local carrier for the inbound call records. The records provided from the subpoena substantiated the complainant's claims of receiving the calls. The CSD provided the Company with notice of these violations on May 27, 2005.

The CSD received its third complaint (T05-00164) on June 6, 2005, alleging that the complainant, a person properly listed on the Do-Not-Call register, received an unlawful telephone solicitation from The Company on the morning of June 6, 2005. Pursuant to the CSD's continuing investigation, a subpoena was issued to the alleged caller's local carrier for the outbound toll call records terminating at the complainant's telephone number. The records provided from the subpoena substantiated the complainant's claim of receiving the call. The CSD provided the Company with notice of this violation on June 22, 2005.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by the Company

in this proceeding is fourteen thousand dollars (\$14,000), arising from these six (6) unlawful telephone solicitation call violations (\$12,000) and the failure to register in the Do-Not Call Program (\$2,000).

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. The Company has approximately fifteen (15) employees with its corporate headquarters located in Atlanta, Georgia.

After receiving notice of the violations, the Company contacted the CSD and expressed an interest in resolving the matter. Company officials notified the CSD that its internal investigation of the violations has resulted in the termination of two (2) employees. The CSD has received no additional complaints against the Company from Tennessee consumers since June 6, 2005.

In an effort to resolve these complaints, represented by the file numbers above, CSD and the Company agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. The Company does not dispute that the complaints against it are true and valid and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1), and TENN. CODE ANN. §65-4-405(d) and TENN. COMP. R. & REGS. 1220-4-11.04.
2. The Company through its legal counsel has notified the CSD that it has ceased soliciting in Tennessee and will register with the TRA as a telephone solicitor in the Do-Not Call Program, before any further telephone solicitations are made into Tennessee.

3. The Company agrees to pay eight thousand four hundred dollars (\$8,400.00) in settlement of the complaint, and agrees to remit four thousand two hundred dollars (\$4,200.00) to the TRA no later than thirty (30) days from the date of approval of the Settlement Agreement by the Directors. The Company shall pay the remaining four thousand two hundred dollars (\$4,200.00) to the TRA no later than ninety (90) days after the date the Directors of the TRA approve this Settlement Agreement.<sup>1</sup>
4. The Company agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. Upon payment of the amount of eight thousand four hundred dollars (\$8,400.00) and full compliance with the other terms and conditions of this Settlement Agreement, the Company is excused from further proceedings in this matter.
5. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.
6. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

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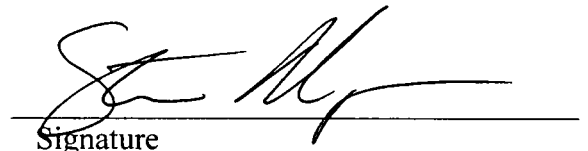
<sup>1</sup> The payments may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 05-00175.

7. The Company agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
8. In the event that the Company fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. The Company shall pay any and all costs incurred in enforcing the Settlement Agreement.



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

8-11-05  
Date



Signature

STEVEN WAGNER  
Print Name

COMPLIANCE OFFICER  
Print Title

8/10/05  
Date

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Nashville, Tennessee 37243-0505

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Sara Kyle, Director

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Between March 8, 2005 and June 6, 2005, the Authority received three (3) complaints alleging six (6) separate violations against National Forex of Tenn. Code Ann. §65-4-401 *et seq.* At the time of the complaints, National Forex was not registered with the Authority as a solicitor. This Settlement requires National Forex to make a payment of \$8,400 to the Authority along with assurances that it will fully comply with applicable state law. The terms of this Settlement require National Forex to pay the first installment of \$4,200 to the Authority no later than thirty (30) days following the Authority's approval of the Settlement Agreement with the remaining \$4,200 to be paid no later than ninety (90) days following approval of the Settlement Agreement. A designated representative for National Forex will participate by telephone for the Conference to answer any questions you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should result in no further telephone solicitation complaints being filed against National Forex. Staff submits the attached Settlement Agreement for your consideration at the August 22, 2005 Authority Conference.

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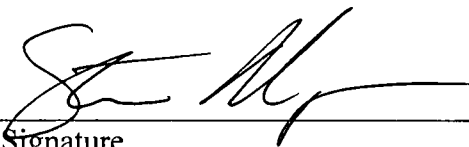
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Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

8-11-05

Date



Signature

STEVEN WAGNER

Print Name

COMPLIANCE OFFICER

Print Title

8/10/05

Date